

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SCOTT PETERSON,

Plaintiff,

v.

MICHAEL CULLEN, et al.,

Defendants.

CASE NO. C05-465JLR

MINUTE ORDER

The following minute order is made by the direction of the court, the Honorable James L. Robart:

The court has received Plaintiff's motion in which he requests the court to allow discovery, cancel the trial date, and to set a hearing on damages (Dkt. # 14). Because Defendants are in default, the court GRANTS Plaintiff's request to cancel the trial date and VACATES its prior minute order setting trial and related dates as moot (Dkt. # 13).

As to Plaintiff's motion to allow discovery, the court DENIES the motion as unnecessary. Plaintiff may conduct discovery as a matter of right under the federal rules; however, the court cautions Plaintiff that he must treat the defaulting Defendants as non-parties for purposes of discovery. Blazek v. Capital Recovery Assocs., Inc., 222 F.R.D. 360, 361 (E.D. WI. 2004) (holding that non-party discovery rules applied to defaulting defendant); LG Electronics, Inc. v. Advance Creative Computer Corp. et al., 212 F. Supp. 2d 1171, 1177 (N.D. Cal. 2002) (holding that unanswered requests for admission served on defaulting defendant was insufficient to serve as evidentiary basis for award of

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1 damages). Thus, for example, in order to obtain documents from a non-party, a party  
2 would need to obtain a subpoena from the court within the district in which the  
3 production is to be made. Fed. R. Civ. P. 34(c) (citing Fed. R. Civ. P. 45).

4 Lastly, Plaintiff's motion for a hearing on damages is DENIED as premature.  
5 Such a request (if any) is appropriate at the time in which a party files for a default  
6 judgment pursuant to Fed. R. Civ. P. 55(b)(2). At that time, the court determines whether  
7 a hearing is necessary or whether a determination can be made on the basis of affidavits.  
8 Id.; see also Davis v. Fendler, 650 F.2d 1154, 1161-62 (9th Cir. 1981).

9 Filed and entered this 12th day of December, 2005.

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11 BRUCE RIFKIN, Clerk

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13 By Deputy Clerk  
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